SINGLE BENCH (4)

Rs 400/-

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

WRIT PETITION NO. 4266 OF 2006

PETITIONER :

1. Pujeri Lal, S/o Kalap Ram, Aged about 38 years, Presently posted and working as Jalvahak, SC/ST Boys Hostel, Dhurkot, District Janjgir-Champa (Chhattisgarh)

2. Laxmi Kumar Patel, S/o Mohan Singh Patel, Aged about 39 years, Presently posted and working as Jalvahak, SC/ST Boys Hostel, Dabra, District Janjgir-Champa (Chhattisgarh)

3. Balram, S/o Lakhan, Aged about 40 years, Presently posted and working as Chowkidar, Adivasi Ashram, Dhaurabhata, District Janjgir-Champa (Chhattisgarh)

4. Jeevan Lal, S/o Ghasia Ram, Aged about 46 years, Presently posted and working as Rasoiya (Cook), Adivasi Ashram, Dhaurabhata, District Janjgir-Champa (CG)

P.R. No. 3936/06
Presented by Shri R. Jaiswal
dated 25/12/06

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Versus

RESPONDENTS :

1. State of Chhattisgarh
Through the Secretary, Department of Tribal Welfare, D.K.S. Building, Mantralaya, Raipur, Chhattisgarh.

2. Commissioner,
Department of Tribal Welfare, District Janjgir-Champa (CG)

3. Collector (Tribal Welfare Branch)
Janjgir-Champa (Chhattisgarh)

4. District Organizer,
Department of Tribal Welfare,
District Janjgir-Champa (CG)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 4266 of 2006

Petitioners Pujeri Lal and others

Versus

Respondents State of Chhattisgarh & others

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Mr. B.D. Guru, counsel for the petitioner.
Mr. V.V.S. Murthy, Senior Advocate with Mr. Ajay Dwivedi, Panel lawyer for the respondents/State.

ORDER

(Passed on this 27th day of February, 2007)

1. By this petition, the petitioners have challenged the validity of the order dated 3.8.2002 (P/1), passed by the District Organizer, Department of Tribal Welfare, District Janjgir-Champa (Respondent No. 4), whereunder the grant of regular scale to the petitioners was withdrawn and the petitioners were paid thereafter colllector's rate.

2. The indisputable facts in nutshell are that the petitioners were engaged on daily wagers on collector's rate. The petitioner No. 1 (Pujari Lal) was initially appointed on the post of Chowkidar vide order dated 13.1.94. The petitioner No. 2 (Laxmi Kumar Patel) was initially appointed vide order dated 27.12.93 on the post of Waterman-cum-Chowkidar. The petitioner No. 3 (Balram) was initially appointed on the post of Helper on 25.3.92 and the petitioner No. 4 (Jeevan Lal) was initially appointed on the post of Cook vide order dated 27.1.90 (P/2), respectively.

3. Thereafter, vide order dated 22.7.2000 on completion of three years of service the petitioner No. 1 was treated as member of the Workcharged and Contingency Temporary Service w.e.f.

22.7.2000 and he was granted regular pay scale of Rs. 2550-55-2660-3200/-. The petitioner No. 2 was granted regular pay scale of Rs. 2550-55-2660-3200/- w.e.f 28.2.2000. The petitioner No. 3 was granted regular pay scale of Rs. 2550-55-2660-3200/- w.e.f. 1.1.96 and the petitioner No. 4 was granted regular pay scale of Rs. 2550-55-2660-3200/- w.e.f. 15.7.96.

4. Learned counsel appearing for the petitioner submits that accordingly the petitioners were continued in service and were getting salary on the basis of regular pay scale granted to them. But all of a sudden, vide order dated 3.8.2002, the grant of regular pay scale was withdrawn.

5. Shri B.D. Guru, learned counsel appearing for the petitioner would contend that once a right of a particular pay scale has been granted to the petitioners in accordance with law, the same cannot be withdrawn after a period of five-six years, without affording an opportunity of hearing. The petitioners have acquired the right to the fixed monthly pay scale and they became Workcharged and Contingency Paid Employees. Thus, the impugned order is bad and deserves to be quashed.

6. Learned counsel for the petitioners heavily referred to a judgement and order dated 18th January, 2006 passed by this Court in Writ Petition No. 2125/2002 (**Sant Kumar & others vs. State of Chhattisgarh & others**), wherein this Court while considering the identical issue of reducing the regular pay scale granted earlier, held that the order reducing the pay scale of an employee behind their back, without following any procedure known to law in punitive and visits with civil consequence. The

same cannot be passed without giving concerned employee, an opportunity of hearing.

7. Learned counsel for the petitioner also submits that in Sant Kumar's case (supra), this Court has relied on a decision of Hon'ble Supreme Court in **Bhagwan Shukla Vs. Union of India & others** {(1994) 6 SCC 154}, wherein, while considering the reduction of pay of the employee from Rs. 190/- per month to Rs. 181/- per month the Hon'ble Supreme Court has held as under:-

> "The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed putting the concerned to notice and giving him a hearing in the matter."

8. Learned counsel for the petitioner further submits that the respondents/State of Chhattisgarh preferred a Special Leave Petition (Civil) No. 17122/2006 (State of Chhattisgarh & others Vs. Sant Kumar & others) before the Hon'ble Supreme Court, challenging the order dated 18.1.2006 (supra), passed by this Court and the same has been dismissed by the Hon'ble Supreme Court vide order dated 9.10.2006 after condoning the delay. Shri V. V. S. Murthy, learned Deputy Advocate General appearing for the respondents/State with Mr. Ajay Dwivedi,

learned Panel Lawyer, do not dispute the fact. Thus, the order has become final.

9. In view of the foregoing, I am of the considered opinion of that the impugned order dated 3.8.2002 (P/1) is bad in law, being punitive in nature, without affording an opportunity of hearing to the concerned employees (petitioners) for putting forward their cases.

10. Accordingly, the order dated 3.8.2002 (P/1) is quashed. The petitioners are entitled to regular pay scales from the date, the same have been withdrawn by the impugned order.

11. Mr. V.V.S. Murty, learned Deputy Advocate General appearing for the respondents/State submits that keeping in view the quantum of the difference of the amount, payable to the petitioners, some instalments be granted. The contention of learned counsel appears to be just and reasonable. The difference of the amount shall be paid to the petitioners quarterly in four instalments. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu